

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-726

January 20, 1998

CTC COMMUNICATIONS CORPORATION
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Local
Exchange Telephone Utility

ORDER GRANTING AUTHORITY
TO PROVIDE LOCAL SERVICE

WELCH, Chairman; NUGENT and HUNT, Commissioners

In this Order, the Commission grants CTC Communications Corporation (CTC or Company) the authority to provide competitive local exchange service throughout the State of Maine. We also exempt CTC from the requirements of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On September 18, 1997, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, CTC filed a petition with the Commission requesting authority to provide local telephone service in Maine. In Docket No. 97-771, CTC has previously obtained authority from the Commission to provide interexchange service.¹

35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to

¹In its petition in Docket No. 97-726, CTC requested "authority to operate as a provider of residential and commercial basic local exchange and interexchange telecommunications services." CTC has subsequently clarified that it is seeking only local authority in this proceeding, having separately obtained interexchange authority from the Commission in Docket No. 97-771.

provide any interstate or intrastate
telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting CTC the authority to provide local exchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

We have previously found that CTC is qualified to provide interexchange service. We therefore find that its financial and management capabilities are adequate to provide local services in Maine.

II. NEED TO FILE TERMS AND CONDITIONS AND RATE SCHEDULES

In order to provide actual service, a utility not only must have authority to provide service but must have on file with the Commission a schedule of rates, terms and conditions for the services it will provide. CTC filed illustrative rate schedules for local exchange service and additional interexchange services in this proceeding on November 25, 1997. The Company indicates that it wishes to revise those schedules before they go into effect, and to combine the schedules for its local exchange services with those approved in Docket No. 97-771 for its initial interexchange services. 35-A M.R.S.A. § 304 requires that a utility must file rate schedules and terms and conditions prior to providing a service. The terms and conditions shall specify the areas in which CTC will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier (ILEC) exchanges rather than by municipalities.

III. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it would not be possible for CTC's customers

to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission. On December 9, 1997, in Docket No. 97-931, New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine requested Commission approval of a resale agreement with CTC. We approved that agreement on January 6, 1998.

If a competitive local exchange carrier (CLEC) makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254"

As a condition of providing local exchange service, CTC must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

IV. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, CTC must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. CTC shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Although CTC has not requested a waiver from the requirements of 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests, the Commission has the authority to grant such a waiver on its own motion. We grant this waiver subject to certain conditions: that CTC shall inform the Commission of changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 2 below. If necessary, CTC shall also refile its rate schedules and terms and conditions to reflect its new identity.

In its petition, CTC requested waivers of reporting requirements of Chapter 20, *Reporting Requirements for Local Exchange Carriers*; Chapter 130, *Safety and Accident Reporting Requirements*; and Chapter 204, *Basic-Service Calling Areas*. CTC stated "such requirements are not consistent with the demands of

the competitive market, or they constitute an undue burden on a competitive provider." We address each of these waiver requests.

Chapter 20 requires LECs to report major service interruptions, to enable the Commission to evaluate whether the service being provided to customers is adequate. More detailed service quality reporting mechanisms are implemented on an individual basis with some LECs.² We do not believe the Chapter 20 reporting requirements are burdensome, and given the benefit of this reporting that enables the Commission to assess levels of service being provided, we will not grant the requested waiver to Chapter 20.

Chapter 130 reflects a statutory requirement that the Commission immediately investigate any accident occurring upon the premises of a public utility or directly or indirectly arising from or connected with its maintenance or operation, that results in the loss of human life. The statute allows the Commission some latitude in investigation of other such accidents resulting in personal injury or property damage. Chapter 130 simply implements requirements of Maine law which the Commission does not have the power to waive. Thus, we will not grant the requested waiver of Chapter 130 reporting requirements.

CTC also requested that it be exempted from the record keeping requirements of Chapter 210, *Uniform System of Accounts - Telephone Utilities*; and Chapter 710, *Auditing Requirements for All Public Utilities*. We have routinely granted such waivers for interexchange carriers (the waiver is now stated in Chapter 280). We have also granted such waivers to CLEC applicants and will do so here, noting that there may be some circumstances, e.g., requirements for CLECs that become eligible telecommunications carriers, that make revocation of the waivers necessary.

Chapter 204 governs Basic Service Calling Areas and applies to all local exchange carriers (LECs). Section III(A) requires LECs to analyze, every 5 years, residential toll traffic data in each exchange. This data is necessary in order to determine whether an exchange should be included in a BSCA, and is no less relevant from a CLEC than from an ILEC. We, therefore, will not, at least at present, grant a waiver from this requirement. CTC shall, however, report on the same schedule as any ILEC also serving in the same territory.

CTC further requested a waiver of the specific requirement of Chapter 204, *Basic-Service Calling Area*, that CTC publish

²For example, Bell Atlantic-Maine has service quality reporting and incentive mechanisms embedded in the alternative form of regulation we adopted for that company in Docket No. 94-123.

local exchange directories. That requirement was designed to ensure that all customers have telephone directories for their complete local calling area. It was not intended to require that each LEC separately publish directories, only that LECs are responsible for providing directories with complete local calling area information to all customers. CTC stated that it intends to "make arrangements with the incumbent LECs whereby the names of CTC's customers will be included in the directories published by the incumbent LECs," and that "these directories will be distributed to CTC's customers." We find that the approach outlined by CTC satisfies the intent of Chapter 204 without a need for us to waive the requirements of that rule.

V. OTHER REQUIREMENTS

Except as expressly waived in Section IV above, CTC shall comply with all applicable rules of the Commission and statutes of the State of Maine.

If CTC resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

VI. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of CTC Communications Corporation to provide local exchange telephone service to all areas within the State of Maine;

2. Exempt CTC Communications Corporation from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that CTC Communications Corporation shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of CTC Communications Corporation or of any entity that owns more than 50% of CTC Communications Corporation. CTC Communications Corporation shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. CTC Communications Corporation shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, CTC Communications Corporation shall amend its rate schedules and terms and conditions to reflect any change in identity; and

3. Order that CTC Communications Corporation shall not provide local exchange telephone service until the Commission approves schedules of rates, terms and conditions for the provision of such service.

Dated at Augusta, Maine, this 20th day of January, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.